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9 **UNITED STATES DISTRICT COURT**
10 **NORTHERN DISTRICT OF CALIFORNIA**
11 **SAN FRANCISCO DIVISION**

12 KYTCH, INC.,

13 Plaintiff,

14 v.

15 MCDONALD'S,

16 Defendants.
17

CASE No. 23-CV-01998-TSH

**CLARE LOCKE LLP'S RESPONSE TO
MOTION TO STRIKE**

18
19 Clare Locke LLP responds to Plaintiff Kytch, Inc.'s Motion To Strike (Dkt. 58) as follows.

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21 On November 24, 2023, Clare Locke gave written notice of its attorneys' liens to Kytch,
22 opposing counsel, and the relevant clerks of court, including the clerk of this Court and of the court
23 in Alameda County as Virginia law, which governs Clare Locke's dispute with Kytch, requires. *See*
24 Va. Code § 54.1-3932. Furthermore, Kytch's attorneys are duty-bound to inform Clare Locke of
25 the fact and amount of any purported settlement. *See* District of Columbia Bar, Ethics Opinion 379
26 (adopting the approach from State Bar of California Standing Committee on Professional
27 Responsibility & Conduct, Formal Opinion 2008-175, which provides that attorneys are required
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1 by the ethics rules to disclose both the fact and amount of settlement to a client's former attorney
2 who maintains an attorneys' lien).

3 Nonetheless, in late March 2024, Clare Locke learned that the parties to this case may have
4 purported to reach a settlement, and that on March 15, 2024, this Court entered a Stipulation To
5 Stay Action and Order (Dkt. 53) whereby the parties advised, "on March 14, 2024, the parties
6 tentatively reached an agreement for settlement of both the Alameda Litigation and the N.D. Cal.
7 Litigation, which they are working to finalize" and sought the Court's consent (which the Court
8 granted) to stay the action "to allow the Parties to finalize and execute the settlement agreement."
9 *Id.* at 2. As Kytch acknowledges, "[i]t is true, no one 'consulted' with Clare Locke about the
10 litigation" or the proposed settlement. Dkt. 58 at 4. Accordingly, after inquiry to the parties yielded
11 no reliable assurances, Clare Locke filed its Notice of Objection to Dismissal in Light of Attorneys'
12 Lien (Dkt. 54) to remind the Court and the parties of Clare Locke's valid and pending attorneys'
13 liens. Clare Locke's Notice of Objection sought no relief from the Court at that time, but explained
14 that Clare Locke reserved the right to do so in the future if and as necessary.

15 Following the filing of those objections, Clare Locke continued to seek assurances from
16 Kytch that Clare Locke's lien would be honored, to no avail. Accordingly, Clare Locke sought and
17 secured emergency, interim injunctive relief against Kytch from an Emergency Arbitrator in the
18 ongoing Clare Locke-Kytch arbitration proceeding pending in Virginia before the American
19 Arbitration Association. In an Emergency Award, entered on April 2, 2024, the Emergency
20 Arbitrator found that Clare Locke had "stated a *prima facie* claim for relief and demonstrated a
21 likelihood of success" on its quantum meruit claim against Kytch. Emergency Award (Ex. 1) at 9.
22 The Emergency Arbitrator also found "there does not appear to be any dispute that settlements are
23 in the works, that settlement proceeds will be available to [Kytch] under the settlements or that
24 [Kytch] has not yet agreed to or submitted a stipulated order in the Kytch Litigation agreeing not to
25 disburse any settlement funds. Accordingly, there is a risk that [Clare Locke] will suffer irreparable
26 harm absent injunctive relief." *Id.* (footnotes omitted).

1 Based on these findings and conclusions, the Emergency Award, among other things,
2 “preliminarily enjoin[ed] Kytch and its officers, agents, servants, employees, attorneys, and other
3 persons in active concert or participation with them from dismissing any of the cases in the Kytch
4 Litigation and/or dispersing, encumbering, and/or dissipating any settlement funds received in the
5 Alameda County Action, the Delaware Action or the Northern District of California Action [i.e.,
6 this action] from the date of this Decision and Order up to and until 45 days following [Clare
7 Locke]’s receipt of the last of the Settlement Documents along with a certification under penalty of
8 perjury from an officer of Kytch that all such documents in their complete, final form have been
9 provided.” Emergency Award at 10–11. Because Kytch has not yet agreed to comply, much less
10 actually complied, with the Emergency Award and has repeatedly questioned the Arbitrator’s
11 jurisdiction, Clare Locke is seeking to confirm that award in the United States District Court for the
12 Eastern District of Virginia. *See Clare Locke LLP v. Kytch*, No. 1:24-cv-00545-PTG-WBP (E.D.
13 Va.).

14 Kytch now seeks to strike Clare Locke’s objections, arguing that Clare Locke should have
15 intervened in this action. Kytch also suggests, for the first time in this Court, that Clare Locke’s
16 attorneys’ liens may not be valid. *See* Dkt. 58 at 5. The Court need not be burdened with either
17 argument.

18 First, Clare Locke had no obligation to intervene in this action to assert and remind the
19 parties of its attorneys’ liens—indeed, California law prohibits it from intervening. *See Carroll v.*
20 *Interstate Brands Co.*, 121 Cal. Rptr. 2d 532, 535 (Cal. Ct. App. 2002) (A discharged attorney is
21 **not** permitted to intervene in the substantive case (such as this one) to enforce an attorneys’ lien.).
22 The case cited by Kytch, *Eisenbise v. Crown Equip. Corp., Inc.*, No. 15-CV_972-AJB-WVG, 2015
23 WL 13828753 (S.D. Cal. Dec. 7, 2015) (citing *Spangler v. Pasadena City Bd. of Educ.*, 552 F.2d
24 1326 (9th Cir. 1977)), involved an attempt by a non-party to intervene and seek relief in the
25 substantive case pending before the court. Clare Locke has not sought relief in this action—the
26 Notice of Objection served merely to remind the parties and the Court of Clare Locke’s liens.
27 Rather, Clare Locke is seeking (and has secured) relief in the appropriate forum against Kytch. *See*
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Emergency Award (granting Clare Locke interim relief to protect its liens); *Clare Locke LLP v. Kytch*, No. 1:24-cv-00545-PTG-WBP (E.D. Va.) (seeking to confirm Emergency Award).

Second, under California law,¹ the Court overseeing the underlying litigation out of which the liens arise has no authority to address the validity of the attorneys' liens. Rather, an attorney seeking to enforce an attorneys' lien "must bring a separate, independent action against the client to establish the existence of the lien, to determine the amount of the lien, and to enforce it." *Carroll*, 121 Cal. Rptr. 2d at 536. Clare Locke has initiated that separate action in the parties' agreed-upon forum, an arbitration administered by the American Arbitration Association sited in Virginia. AAA has the authority to address any dispute about the attorneys' liens and has appointed an Arbitrator to do exactly that.

In light of the subsequent developments, including the Emergency Award enjoining Kytch from dismissing this action (and related actions)² unless and until Clare Locke's attorneys' liens are resolved, the Court need not take any action on Clare Locke's objections at this time. And Kytch's motion should be denied.

Dated: April 30, 2024

Respectfully Submitted,

CLARE LOCKE LLP

By: /s/ Jered T. Ede
Jered T. Ede SBN 273440

Attorney for Clare Locke LLP

¹ Because the Kytch-Clare Locke relationship is governed by Virginia law, Virginia's attorney lien statute applies, which provides that "any settlement or adjustment of the cause of action is void against the lien" once timely notice is given. Va. Code § 54.1-3932.

² Clare Locke filed a similar Notice of Objections in a related action pending in Alameda County, California, *Kytch, Inc. v. Gamble et al.*, No. RG21099155 (Alameda Cnty.). Notably, Kytch has **not** moved to strike that submission, which was filed on March 21, 2024.

CERTIFICATE OF SERVICE

I hereby certify that, on April 30, 2024, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send a notification of such filing the following:
CLARE LOCKE LLP'S RESPONSE TO MOTION TO STRIKE.

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